

AMENDMENTS TO THE DRAWINGS

The attached sheet of drawings includes changes to Figure 6. This sheet, which includes Figures 4-6, replaces the pending sheet including Figures 4-6. In Figure 6, a phantom wall of the bath (1) and the aperture (18) have been illustrated in accordance with the original disclosure, and specifically noted at page 5, lines 21-27.

Attachment: Replacement Sheet

REMARKS

The above amendments and following remarks are believed to be fully responsive to the Office Action dated July 27, 2010, and accompany a Request for Continued Examination. Claims 1, 4, 12-14, and 22-26 are pending; claims 12-14 are withdrawn. Claims 1, 4, and 22-25 have been amended. Claim 26 has been added. No new matter is being presented by any of the amendments. Applicants respectfully request consideration of pending claims 1, 4, and 22-26.

Specification Amendments

The specification has been amended to make explicit that which was disclosed in the original disclosure, including the as-filed drawings. Specifically, the description of the example fitting has been amended (i) to include reference numeral "18" indicating the aperture in the bath wall and (ii) to make explicit the inherent generally upright axis along the fitting. The specification has been further amended to reflect the drawing amendments noted below.

Support for these amendments is found in the original disclosure. On page 5 at lines 16-17, the specification states that the fittings "can pivot in the direction of arrows P." Looking at Figure 3A, which is a close-up view of part of the bath of Figures 1 and 2, and simultaneously reviewing Figures 1 and 2, it is clear that the axis of pivotal movement "P" of the fittings (4) is about a "generally upright axis." One skilled in the art, given the overall context of the disclosure, will certainly understand that the orientation of the mounting neck (6) is generally upright (or substantially vertical) because, at a minimum, the fitting (4) is illustrated in Figure 1 as oriented generally perpendicular to the plane of the water within the bath. Of course, water in a bath naturally forms a horizontal plane due to gravity acting on the water. In light of at least the above, there can be no doubt that one skilled in the art will recognize that Applicants were in possession of all that is disclosed and claimed at the time of filing the application.

Drawing Objections

The drawings have been objected to for not showing every feature of the invention specified in the claims. In particular, the "generally vertically extending hollow

mounting neck which . . . enters into an aperture in the bath wall or rim" was specifically noted as not shown in the drawings.

While the language of claim 1 has been amended to call for a "generally upright axis," Figure 6 has also been amended to remedy these objections. Figure 6 now explicitly illustrates an axis "V" along the mounting neck. This axis is not new matter as the original Figure 6 and the original disclosure (e.g., see page 5, lines 21-27) inherently disclose the existence of such an example axis along the mounting neck (identified as item "6").

Figure 6 has been further amended to illustrate the bath wall (identified as item "1") generally illustrated in Figure 1 and the aperture (item "18") described in the original description at page 5, lines 21-27. The original description notes that the hollow mounting neck is carried in a tubular collar fixed in an aperture in the bath wall, which is now explicitly illustrated in phantom in Figure 6.

No new matter is believed to have been added by any of these amendments, and Applicants respectfully request that the objection to the drawings be withdrawn.

Claim Rejections - 35 U.S.C. § 112, ¶ 1

Claims 1, 4, and 22-25 were rejected under 35 U.S.C. § 112, first paragraph, as containing subject matter not described in the specification in such a way to reasonably convey to one skilled in the art that Applicants were in possession of the claimed invention at the time of filing. Specifically, the Office Action takes issue with the following language of then-pending claim 1: each fitting comprises a generally vertically extending hollow mounting neck which . . . enters into an aperture in the bath wall or rim . . . by which the fitting is pivotally mounted about a generally vertical axis. The Office Action makes special note of the "vertical axis" language.

When the entire disclosure is properly considered in context, it is evident that one skilled in the art will understand that Applicants were in possession of each and every element noted above and of those found in amended claim 1. For instance, an example fitting and hollow mounting neck are clearly shown in Figures 5 and 6, and described in the original disclosure on page 5, lines 21-27. With respect to the aperture in the bath, one skilled in the art will understand from Figures 1, 2, 3A, 3B, 5, and 6 that the bath

includes an opening for the tubular collar (7) as is described in detail on page 5, lines 21-27 of the original disclosure (e.g., "a tubular collar 7 fixed in an aperture in the bath wall, so that a user can pivot the fitting 4 by pushing or pulling the top of the fitting, causing the fitting to rotate in the tubular collar 7").

In addition, on page 5 at lines 16-17, the specification states that the fittings "can pivot in the direction of arrows P." Looking again at Figure 3A and simultaneously reviewing Figures 1 and 2, it is clear that the axis of pivotal movement "P" of the fittings (4) is about a generally upright or vertical axis. One skilled in the art, given the overall context of the disclosure, will certainly understand that the orientation of the mounting neck (6) is generally upright (or substantially vertical) because, at a minimum, the fitting (4) is illustrated in Figure 1 as oriented generally perpendicular to the plane of the water within the bath, which, of course, naturally defines a horizontal surface due to the force of gravity. Given the horizontal reference of the water, it is easily understood that the fitting extends substantially upright or vertical to the horizontal orientation. Contrary to the presumed requirement noted in the Office Action, explicit "discussion of a vertical axis" is not required, as one skilled in the art will understand the disclosure in its overall context, including the original figures.

Applicants respectfully request that the above rejection to claims 1, 4, and 22-25 under 35 U.S.C. § 112, first paragraph be withdrawn.

Claim Rejections - 35 U.S.C. § 112, ¶ 1

Claims 1, 4, and 22-25 were further rejected under 35 U.S.C. § 112, first paragraph, as containing subject matter not described in the specification in such a way to reasonably convey to one skilled in the art that Applicants were in possession of the claimed invention at the time of filing. Specifically, the Office Action takes issue with the following language of claim 1: not extending beyond the bath wall or a rim section.

When the entire disclosure is properly considered in context, it is again evident that one skilled in the art would have understood Applicants to be in possession of each and every element noted above and of those found in amended claim 1. For example, reading the claim language in context reveals that the fittings are configured to not extend beyond the wall or the rim into an interior of the bath. Figures 3A and 3B illustrate that the fittings (4) can pivot relative to the interior of the bath. Notably, each

illustrates the fittings (4) remaining out of the interior of the bath where the fittings (4) would interfere with the comfort of a bather seated in the bath and leaning against the wall. One skilled in the art, with even a cursory review of Figures 3A and 3B, will understand that Applicants were in possession of the claimed subject matter.

Applicants respectfully request that the above rejection to claims 1, 4, and 22-25 under 35 U.S.C. § 112, first paragraph be withdrawn.

Claim Rejections - 35 U.S.C. § 112, ¶ 1

Claims 1, 4, and 22-25 were further rejected under 35 U.S.C. § 112, first paragraph, as containing subject matter not described in the specification in such a way to reasonably convey to one skilled in the art that Applicants were in possession of the claimed invention at the time of filing. Specifically, the Office Action takes issue with the following language of claim 1: said fittings being pivotally moveable . . . from said one pivotal position towards one another.

Again, properly considering the entire disclosure (including figures) in context, it is evident that one skilled in the art would have understood Applicants to be in possession of each and every element noted above. For example, Figures 3A and 3B illustrate that the fittings (4) can pivot, that is, move between the position shown in Figure 3A and the position shown in Figure 3B.

Breadth of claim language is not to be confused with indefiniteness of that same language. The original disclosure, at page 5, lines 16-27, discussing the pivotal movement of the fitting (albeit described in context of the example embodiment having a collar), is sufficient to inform one skilled in the art that Applicants were in possession of the claimed fittings that are pivotally moveable from one pivotal position towards one another as generally illustrated in Figures 3A and 3B. As for the disclosure of an additional movement direction (i.e., arrow Q), the disclosure of alternative or additional movement does not hamper the disclosure of the pivotal movement.

Applicants respectfully request that the above rejection to claims 1, 4, and 22-25 under 35 U.S.C. § 112, first paragraph be withdrawn.

Claim Rejections - 35 U.S.C. § 112, ¶ 2

Claims 1, 4, and 22 were rejected under 35 U.S.C. § 112, second paragraph, as being indefinite. Specifically, claim 1 was rejected for the following language: not extending beyond the bath wall or a rim section. Minor antecedent basis clarifications have been made to further clarify the rejected claim language. The Office Action appears to mistakenly focus on the “water flow” as not extending beyond the wall or the rim; however, the claim language is directed toward the fitting not extending beyond the wall or the rim. Applicants believe the above language is clear as presented and request that this rejection be withdrawn.

Claim 1 was further rejected as being unclear in the use of the term “bath wall.” Applicants have amended claim 1 to clarify the “bath” and the “wall” as used therein. As such, the rejection is believed to be overcome and Applicants request that this rejection be withdrawn.

Claim 4 was rejected for insufficient antecedent basis for “the upper body water outlets.” Claim 4 has been amended to call for “upper body water outlet fittings,” and thus overcomes this rejection. Additional clarifications are also presented in amended claim 4. Applicants request that this rejection be withdrawn.

Claim 22 was rejected for an unclear relationship between the “end wall section” and the “wall of the bath” found in claim 1. Both claims 1 and 22 have been amended to clarify the relationship of “a wall of the bath” in claim 1 and “the wall” including “an end wall section” in claim 22. Applicants believe that this rejection has been overcome and request that the rejection be withdrawn.

Claim Rejections - 35 U.S.C. § 103(a)

Given that the claims stand examined “as best understood,” Applicants respectfully request that the nonobviousness of the pending claims be reexamined in view of the clarifying amendments and remarks. The following remarks further highlight the patentability of the claims and deficiencies of the pending rejections.

The Office Action fails to establish a *prima facie* case of obviousness as it ignores the contextual language of each and every claim element, and thus neglects to adequately determine the differences between the claimed invention as a whole and the prior art. See MPEP § 2141.02. “When evaluating claims for obviousness under 35

U.S.C. 103, all the limitations of the claims must be considered and given weight" MPEP § 2143.03. Moreover, a "functional limitation must be evaluated and considered, just like any other limitation of the claim, for what it fairly conveys to a person of ordinary skill in the pertinent art in the context in which it is used." MPEP § 2173.05(g). For example, the phrase "members adapted to be positioned" was found perfectly acceptable "to precisely define present structural attributes of interrelated component parts of the claimed assembly." MPEP § 2173.05(g) (citing *In re Venezia*, 530 F.2d 956 (CCPA 1976)).

Claims 1 and 22, as were "best understood," stand rejected under 35 U.S.C. § 103(a) as being unpatentable over USPN 2,073,307 ("Isenberg"), USPN 963,945 ("Sandham"), and USPN 1,054,922 ("Kenney").

The Office Action does not adequately address each of the various contextual claim limitations. For example, the following language was not contextually analyzed: (i) the upper body water outlet fittings being positioned to direct water flow onto the shoulders and/or neck of the bather from behind; (ii) a hollow body that is elongate in a generally horizontal axis; (iii) a hollow mounting neck that extends from closer to one end of the fitting than an opposite end; (iv) the hollow mounting neck entering into an aperture in the wall or rim; (v) the pivotal mounting of the fitting about a generally upright axis; and (vi) the fittings not extending beyond the wall and/or the rim into an interior of the bath. Without addressing each and every claim limitation, a *prima facie* case of obviousness has not been established. Applicants submit that the claims, when properly analyzed in context, are patentable over the art of record.

In any event, Isenberg actually teaches away from positioning a fitting to direct a flow of water onto the shoulders and/or neck of a bather from behind the bather sitting in the bath. The spray head (10) of Isenberg is described as having a neck portion (11) that is secured via a flexible tube (11) to a faucet or other water supply. Isenberg at 2:22-30. The spray head (10) configuration illustrated in Figures 1-3 of Isenberg clearly extends beyond the wall of a bath to which it is attached and into an interior of the bath, and therefore teaches away from the claimed fittings that do not extend beyond the wall and/or the rim of the bath into an interior of the bath.

The Office Action turns to Sandham as teaching the use of a second fitting. While Sandham may disclose two fittings, it does not remedy the other deficiencies of Isenberg. For instance, as clearly illustrated in FIGS. 1 and 2 of Sandham, the spraying disks (19) are fixed to sides of the bath and thus extend well into an interior of the bath (7). Nor does Sandham teach or suggest a hollow mounting neck that extends from closer to one end of the fitting than an opposite end, among other claim limitations clearly present in claim 1.

The Office Action summarily groups various limitations found in claim 1 and dismisses the combination by stating "the choice of fitting positioning would appear an obvious choice to be made depending upon desired coverage." However, the "key to supporting any rejection under 35 U.S.C. 103 is the clear articulation of the reason(s) why the claimed invention would have been obvious," and the "analysis supporting a rejection under 35 U.S.C. 103 should be made explicit." MPEP § 2143. The Office Action again fails to contextually consider each and every claim limitation, and therefore does not establish a *prima facie* case of obviousness.

As yet another example, the Office Action does not adequately address the limitations called for in claim 22. For instance, the approximately concavely curved langue found in claim 22 is not discussed. In any event, the suction cup taught by Isenberg requires a flat, "smooth surface" and would be ill-equipped to engage any type of cured wall. Isenberg at 2:37-44. Therefore, the combination of Isenberg with any curved wall will destroy the basic functionality noted in Isenberg.

It is of note that if the sprayers/nozzles disclosed in Isenberg, Sandham, and/or Kenney are modified or oriented such that they may direct water from behind a bather onto the bather's shoulder and/or neck, the sprayers/nozzles will eliminate an unobstructed wall against which the bather leans back against during use. Sandham and Kenney both illustrate reclined walls that are free from any sprayers, nozzles, drains, and valve controls. Thus, the references implicitly teach away from adding any device that negatively impacts the unobstructed reclined wall of a bath.

Claims 1, 4, and 22-25 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Isenberg, Sandham, and Kenney, as previously applied to claims 1 and 22, and with further reference to USPN 6,182,303 ("Gardenier") and USPN

5,682,625 ("Leaverton"). These rejections also suffer from similar deficiencies noted above with respect to claims 1 and 22.

Additionally, in discussing claim 4, the Office Action notes that the "outlet fittings of the Isenberg bath are not elongate." This admission supports the above-conclusion that any combination including Isenberg does not make obvious the limitations of claim 1. The Office Action cites Gardenier as disclosing outlet fittings that are elongate. However, this is not the language of claim 4 and further overlooks the various structural limitations noted with respect to the upper body water outlet fittings called for in claim 1, such as the hollow mounting neck that extends from closer to one end of the fitting than an opposite end. In any event, claim 4 is allowable, at a minimum, as it depends from allowable independent claim 1.

Claim 23 is in condition for allowance, at a minimum, because it depends from allowable independent claim 1.

Claim 24 is deemed obvious based upon the disclosure in Gardenier of a head rest 130 (shown in Figures 10 and 11). However, the Office Action again fails to properly read the claims in context. Claim 24 calls for "said left and right side upper body water outlet fittings [] provided on either side of a central pillow for the bather." Thus, the central pillow has fittings on either side. To the contrary, the head rest 130 of Gardenier is "mounted below the head rest 130." Gardenier at 6:41. Claim 24 is further allowable because it depends from allowable independent claim 1.

Claim 25 is deemed obvious in view of Leaverton. However, the claimed "suction inlet" is not addressed in the Office Action. In any event, claim 25 is allowable, at a minimum, because it depends from allowable independent claim 1.

In light of at least the above, Applicants respectfully request a timely notice of allowance of claims 1, 4, and 22-25.

Clerical Claim Amendments

In preparing this response, additional claim amendments were made to claims 1, 4, and 22-25, as noted, to provide minor clarifications to the claim language. These

amendments are of a clerical nature and were not made for reasons related to patentability.

New Claim

Claim 26 has been added to further claim subject matter support in the original disclosure. For instance, claim 26 is directed toward fittings having a hollow mounting neck that extends upward along an axis through a wall section of the bath, and that are pivotable about the axis to direct a flow of water through an outlet from behind the bather and over a shoulder of the bather. The structure and operation are fully supported, at a minimum, by original Figures 1, 2, 3A, 3B, 4, 5, and 6, and the disclosure found on page 4, line 28 through page 5, line 27. No new matter is being added by this additional claim. Claim 26 is believed to be generic and directed to Figures 1, 2, 3A, 3B, 4, 5, and 6, at a minimum.

Summary

The above remarks are believed to address all of the rejections presented in the July 27, 2010 Office Action. The Applicant respectfully requests that a timely notice of allowance be granted for claims 1, 4, and 22-26.

If the above amendments and remarks are deemed to not place the application into condition for allowance, the undersigned requests a telephonic interview with the Examiner prior to any further Office Action.

The Commissioner is hereby authorized to charge \$1100 for a three-month extension for filing this response to Deposit Account No. 17-0055. In addition, the Commissioner is further authorized to charge \$810 for the accompanying Request for Continued Examination to Deposit Account No. 17-0055. While no additional fees are believed due, the Commissioner is hereby authorized to charge any additional or future fees to Deposit Account No. 17-0055. As always, the Examiner is encouraged to directly contact the undersigned if helpful in advancing the prosecution of this application.

Respectfully submitted,

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